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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,330	09/03/2003	Warren F. Rogers	W0009/7000P5	5688

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BOSTON, MA 02109-1808

EXAMINER
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PRETLOW, DEMETRIUS R

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/654,330

Applicant(s)

ROGERS ET AL.

OK

Examiner

Demetrius R. Pretlow

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 16 is/are allowed.
- 6) ☒ Claim(s) 14 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Applicant claims priority of PCT/US97/09505, however applicant is only entitled to priority of US application 09/083,732 filed May 22, 1998. Applicant is not entitled to priority of PCT/US97/09505 filed June 4, 1997 because this application US 09/350973 was filed July 9, 1999, more than 12 months after PCT/US97/09505.

### ***Claim Objections***

1. Claim 14 is objected to because of the following informalities:

In claim 14, lines 2 and 4, it appears that --apparatus-- should be --apparatuses--.

Appropriate correction is required.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 14 and 15 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 17 and 18 of prior U.S. Patent No. 5,757,664. This is a double patenting rejection.

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5.757,664

<p>14. A method of monitoring a fluid storage and dispensing system, the system comprising a plurality of measurement apparatus for measuring a volume of fluid associated with the system, the method comprising:</p> <p>simultaneously collecting measurement data from the plurality of measurement apparatus in a form readable by a computer to determine a change in the volume;</p> <p>repeating the collecting step to obtain a plurality of the measurement data;</p> <p>storing the plurality of measurement data in a compressed matrix format in a computer memory;</p> <p>and statistically analyzing the compressed matrix format to determine operational monitoring information.</p>	<p>17. A method of monitoring a fluid storage and dispensing system, said system comprising a plurality of measurement apparatus for measuring a volume associated with said system, said method comprising:</p> <p>simultaneously collecting measurement data from said plurality of measurement apparatus in a form readable by a computer to determine a change in said volume;</p> <p>repeating said collecting step to obtain a plurality of said measurement data from said plurality of measurement apparatus;</p> <p>storing said plurality of measurement data in a compressed matrix format in a computer memory; and</p> <p>statistically analyzing said compressed matrix format to determine operational monitoring information.</p>
<p>15. The method of claim 14 further comprising estimating an initial value of the volume during the statistically analyzing step based on the operational monitoring information.</p>	<p>18. The method of claim 17 further comprising estimating an initial value of said volume during said analyzing step.</p>

The best prior art of record , particularly, Hart et al. (US 6,622,757) teach A method and apparatus for monitoring and determining fuel vapor recovery. However Hart et al. does not teach the claim limitations below.

The primary reason for the allowance of claims 1-13 is the inclusion of the method steps of storing the plurality of measurement data in a compressed matrix format in a computer memory; and statistically analyzing the compressed matrix format to determine operational monitoring information and to calculate the volume of fluid based on the measurement data collected from the measurement apparatus and the plurality of temperature sensing devices. It is these steps found in each of the claims, as it is claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.

The primary reason for the allowance of claim 16 is the inclusion of the method steps of adjusting the volume measurement data based on temperature measurements taken from those of the plurality of temperature sensing devices at a height below the height of the volume in the system; storing the plurality of volume measurement data in a compressed matrix format in a computer memory; and statistically analyzing the compressed matrix format to determine operational monitoring information. It is these steps found in each of the claims, as it is claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Demetrius R. Pretlow whose telephone number is (703) 272-2278. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (703) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Demetrius R. Pretlow  
Patent Examiner

 6/21/04

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800